

barrios.jl@outlook.com

From: Claudia Juan Garcia <cjuan@justicia.pr.gov>
Sent: Thursday, August 16, 2018 4:36 PM
To: Jose Luis Barrios
Cc: 'Carolina Velaz Rivero'; Wandymar Burgos Vargas; Iván J. Ramírez Camacho
Subject: RE: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Dear counsel:

I acknowledge receipt of your email and confirm that the Movant in this case exhausted the requirements of the Lift Stay Protocol.

Cordially,

CAJ

Lcda. Claudia A. Juan García
Fiscal Auxiliar III
División de Recursos Extraordinarios y Política Pública
Departamento de Justicia
P.O. Box 9020192
San Juan, Puerto Rico 00902-0192
Tél. (787) 721-2900, ext. 2603
cjuan@justicia.pr.gov



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"Para tener éxito no tienes que hacer cosas extraordinarias, tienes que hacer cosas ordinarias extraordinariamente bien".

From: Jose Luis Barrios [mailto:barrios.jl@outlook.com]
Sent: Thursday, August 16, 2018 4:31 PM
To: Claudia Juan Garcia
Cc: 'Carolina Velaz Rivero'; Wandymar Burgos Vargas; Iván J. Ramírez Camacho
Subject: RE: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Dear counsel Juan García,

I acknowledge receipt of your communication in the present matter declining AMPR's request to modify the stay as to the Complaint of Reference under the Lift Stay Protocol of the Title III Cases. Therefore, having received the notice from Debtor under the Lift of Stay Protocol, declining to modify the stay, we deem exhausted the requirements of the Lift Stay Protocol, including the meet and/or confer requirement, unless you advise otherwise.
Thank you for your prompt communication,

Best regards,

JLB

Jose Luis Barrios-Ramos, Esq.
1801 McLeary Ave. # 303
San Juan, Puerto Rico 00911

Tel. (787) 593-6641

Email: barrios.jl@outlook.com

From: Claudia Juan Garcia <cjuan@justicia.pr.gov>

Sent: Thursday, August 16, 2018 3:33 PM

To: Jose Luis Barrios <barrios.jl@outlook.com>

Cc: 'Carolina Velaz Rivero' <cvelaz@mpmlawpr.com>; Wandymar Burgos Vargas <wburgos@justicia.pr.gov>; Iván J. Ramírez Camacho <jvramirez@justicia.pr.gov>

Subject: RE: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Dear Counsels:

After having the opportunity to evaluate movants' allegations and the information provided by the Commonwealth's legal representatives, the Commonwealth has determined, in coordination with AAFAF legal representatives, that the best course of action in this case is **to decline the request to modify stay due to procedural stage of action, which is still in the preliminary phase.**

Please, **confirm receipt** of this electronic mail.

If you have any questions, feel free to contact me.

Cordially,

Lcda. Claudia A. Juan García
Fiscal Auxiliar III
División de Recursos Extraordinarios y Política Pública
Departamento de Justicia
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From: Jose Luis Barrios [<mailto:barrios.jl@outlook.com>]

Sent: Thursday, August 16, 2018 1:45 PM

To: Claudia Juan Garcia

Cc: 'Carolina Velaz Rivero'

Subject: FW: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Esteem counsel Juan García,

Just a few lines to circle back with you regarding this matter. Please advise if tomorrow Friday, August 17, 2018 and or on Monday, August 20, 2018 you have an available time to hold a brief call in this matter.

You may contact me at 787-593-6641 or at barrios.jl@outlook.com

Best regards,

JLB

From: Jose Luis Barrios

Sent: Thursday, August 9, 2018 2:24 PM

To: 'Claudia Juan Garcia' <cjuan@justicia.pr.gov>

Cc: 'Carolina Velaz Rivero' <cvelaz@mpmlawpr.com>; Wandymar Burgos Vargas <wburgos@justicia.pr.gov>; Garau Gonzalez, Ivan (AAFAF) (ivan.garau@aafaf.pr.gov) (ivan.garau@aafaf.pr.gov) (ivan.garau@aafaf.pr.gov) <ivan.garau@aafaf.pr.gov>; Iván J. Ramírez Camacho <ivramirez@justicia.pr.gov>

Subject: RE: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Esteem counsel Juan García,

Thank you for your communication. I acknowledge receipt of the same. Please, let me know, after your review of the notice, if the scheduling of a call would be helpful in this matter.

You may contact me at 787-593-6641 or at barrios.jl@outlook.com

I look forward to working with you and Carolina in this process,

Best regards,

JLB

From: Claudia Juan Garcia <cjuan@justicia.pr.gov>

Sent: Thursday, August 9, 2018 9:28 AM

To: barrios.jl@outlook.com

Cc: 'Carolina Velaz Rivero' <cvelaz@mpmlawpr.com>; Wandymar Burgos Vargas <wburgos@justicia.pr.gov>; Garau Gonzalez, Ivan (AAFAF) (ivan.garau@aafaf.pr.gov) (ivan.garau@aafaf.pr.gov) (ivan.garau@aafaf.pr.gov) <ivan.garau@aafaf.pr.gov>; Iván J. Ramírez Camacho <ivramirez@justicia.pr.gov>

Subject: FW: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Importance: High

Jose Luis Barrios-Ramos, Esq.
1801 McLeary Ave. # 303
San Juan, Puerto Rico 00911
Tel. (787) 593-6641
Email: barrios.jl@outlook.com

Dear Counsel:

I acknowledge receipt of your Notice informing your intention of filing a motion to lift the automatic stay before the United States District Court of Puerto Rico (Taylor Swain, D.J.). We will review the Notice and circle back with you.

Please, confirm receipt of this electronic mail.

If you have any questions, feel free to contact me.

Cordially,

Lcda. Claudia A. Juan García
Fiscal Auxiliar III
División de Recursos Extraordinarios y Política Pública
Departamento de Justicia
P.O. Box 9020192
San Juan, Puerto Rico 00902-0192
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"Para tener éxito no tienes que hacer cosas extraordinarias, tienes que hacer cosas ordinarias extraordinariamente bien".

From: Jose Luis Barrios <barrios.jl@outlook.com>

Sent: Monday, August 6, 2018 12:50 PM

To: Carolina Velaz Rivero <cvelaz@mpmlawpr.com>

Subject: FW: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Importance: High

Dear Carolina,

Hope you are doing well. I know you must be pretty tight up with the many things in theses Title III Cases. But I wanted to follow up on a another subject we discussed briefly in our call of a month ago about the Transitory Teachers, regarding this Lift of Stay Notice Under the Lift Stay Notice Protocol sent on May 7, 2018, seeking a lift of the stay as to the Complaint filed by AMPR and around 400 teachers against the DE seeking their sick leave pay – which you mentioned in the call the Justice Department was reviewing. Have you received any updates on this from the Justice Department?

Please let me know if in your opinion it would help to schedule a conference call with the Department of Education to confer about it, inasmuch as almost 3 months had elapsed since the initial notice of May 3 and although we want to exhaust any possibility of reaching a consensual agreement on this matter, due to the elapsed time since the initial notice we may have no other choice but to move the Court, if there is no timely response from the Justice Department.

Please do not hesitate to contact me at 787-593-6641 in regards to this matter,

JL

Jose Luis Barrios-Ramos, Esq.
1801 McLeary Ave. # 303
San Juan, Puerto Rico 00911
Tel. (787) 593-6641
Email: barrios.jl@outlook.com

From: Jose Luis Barrios <barrios.jl@outlook.com>

Sent: Friday, May 18, 2018 11:54 AM

To: Perez, Diana M. <dperez@omm.com>; Hermann.Bauer@oneillborges.com; ubaldo.fernandez@oneillborges.com; Imarini@mpmlawpr.com; cvelaz@mpmlawpr.com

Cc: barrios.jl@outlook.com

Subject: Notice to Meet and Confer Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Dear counsels, on May 7, 2018, we give notice under the Lift Stay Protocol as to Plaintiffs' intent to file a motion to lift of stay. The Lift Stay Notice Period of fifteen (15) days expires on Monday, May 21, 2018, without the parties having conferred, as required. This is Movants good faith notice to schedule a conference call to meet the Lift Stay Protocol requirements. Please inform the undersigned if a conference call can be scheduled on Monday, May 21, 2018 at 11:00 a.m. to confer on the present matter.

Regards,

JLB

From: Jose Luis Barrios <barrios.jl@outlook.com>

Sent: Monday, May 7, 2018 5:11 PM

To: Perez, Diana M. <dperez@omm.com>; Hermann.Bauer@oneillborges.com; ubaldo.fernandez@oneillborges.com; Imarini@mpmlawpr.com; cvelaz@mpmlawpr.com

Cc: barrios.jl@outlook.com

Subject: Notice Under Lift of Stay Protocol by AMPR and 412 Plaintiffs in Case against Department of Education; Julia Keleher, in her official capacity as Secretary of the Department of Education and the Commonwealth of Puerto Rico, Case No. SJ2017CV0054

Dear counsels,

Notice of Request for Lift of Stay in Accordance with Lift Stay Protocol.

This notice is being given to Counsels for the Oversight Board and AAFAF at the following email addresses contained in the Fourth Amended Case Management Order of April 4, 2018:

Counsel for Oversight Board: Herman Bauer at Hermann.Bauer@oneillborges.com and Ubaldo M. Fernández Barrera at ubaldo.fernandez@oneillborges.com

Counsel for AAFAF: Diana M. Perez at dperez@omm.com, Luis C. Marini-Biaggi at Imarini@mpmlawpr.com and Carolina Velaz-Rivero at cvelaz@mpmlawpr.com

Therefore, in accordance with Paragraph III. Section Q and subsequent sections therein of the Fourth Amended Case Management Order of April 4, 2018, we hereby give the following notice:

1. The identity of the movant and its contact information:

Movants or Plaintiffs: Asociación de Maestros de Puerto Rico, and its appropriate unit or Union, Asociación de Maestros de Puerto Rico-Local Sindical, for itself and in representation of its four hundred and twelve (412) members and Plaintiffs. Contact information of each Plaintiff is through its counsel of record, Rafael A. Nadal Arcelay (email: nadal@acnrd.com) and Melissa Lopez Diaz (email: mlopez@cnrd.com) Cancio Nadal Rivera & Diaz, P.S.C. P.O. Box 364966, San Juan, Puerto Rico 00936-4966; Tel. 787-767-9625; Fax. 787-767-6720.

Defendants: Department of Education of the Commonwealth; Julia Keleher on her official capacity as the Secretary of the Department of Education of the Commonwealth; and the Commonwealth of Puerto Rico.

2. The claim(s), lawsuit(s), or other proceeding(s) for which movant seeks relief from the automatic stay, including the relevant case number and court information:

Movants seek relief from the automatic stay as to a Complaint for Declaratory Judgment and Breach and/or Impairment of Contracts and Acquired Rights, filed before the Court of First Instance, San Juan Part, Case No. SJ2017CV00542 against the Department of Education of the Commonwealth; the Secretary of the Department of Education of the Commonwealth, Julia Keleher on her official capacity and the Commonwealth of Puerto Rico. The Complaint, seeks a Declaratory Judgment that the retroactive application of Law No. 26 of April 29, 2017, which stayed the application of Article 9 of Law No. 8 of February 4, 2017, regarding the payment or liquidation to retiring or retired teachers of their remaining balance upon retirement of their accumulated sick leave days, up to ninety (90) accumulated sick days, constitutes an illegal and inappropriate impairment of their contractual rights as employees or former employees of the Department of Education. Plaintiffs also seek that the Court orders the Department of Education to issue the payment of the balance of the sick leave days to all Plaintiffs.

Court and Case Number: Court of First Instance, San Juan Part, Case No. SJ2017CV00542

3. The amount of the claim(s) and the asserted causes of action:

Plaintiffs, which are composed of Asociación de Maestros de Puerto Rico, and its appropriate unit, Asociación de Maestros de Puerto Rico-Local Sindical, of itself and in representation of its four hundred and twelve (412) members estimate their claims for payment of the sick leave balance of the four hundred and twelve (412) members in an amount not less than Three Million Three Hundred Thousand Dollars (\$3,300,000.00), plus cost, expenses and attorneys' fees.

Movants seek relief from the automatic stay as to a Complaint for Declaratory Judgment and Breach of Contracts and Acquired Rights, filed before the Court of First Instance, San Juan Part, Case No.

SJ2017CV00542 against the Department of Education of the Commonwealth; the Secretary of the Department of Education of the Commonwealth, Julia Keleher on her official capacity and the Commonwealth of Puerto Rico. The Complaint, seeks a Declaratory Judgment that the retroactive application of Law No. 26 of April 29, 2017, which stayed the application of Article 9 of Law No. 8 of February 4, 2017, regarding the payment or liquidation to retiring or retired teachers of their remaining balance upon retirement of their accumulated sick leave days, up to ninety (90) accumulated sick days, constitutes an illegal and inappropriate impairment of their contractual rights as employees or former employees of the Department of Education. Plaintiffs also seek that the Court orders the Department of Education to issue the payment of the balance of the sick leave days to all Plaintiffs.

4. A brief description of the status of the underlying claim(s), lawsuit(s), or proceeding(s),

The Complaint was filed on June 30, 2017. It was thereafter amended on July 26, 2017. Defendants were served with summons and copy of Amended Complaint on August 3, 2017.

On August 28, 2017, the Defendants filed an Informative Motion requesting the case be stayed in accordance with sections 362 and 922 of the Bankruptcy Code 11 U.S.C. Sec. 362; 922, incorporated by the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"), 48 U.S.C. Sec. 2101 et. seq. , and informing Plaintiffs that they needed to Comply with the Lift Stay Protocol of the Case Management Procedures of the Title III Case of the Commonwealth of Puerto Rico Case No. 17-03283.

5. Cause as to why the stay should be lifted.

Pursuant to Docket No. 2828 the Department of Education of the Commonwealth, is part of the agencies and instrumentalities covered by the Debtor's Title III Case. Based on the aforementioned, the Department of Education sought to inappropriately stay this action before the Court of First Instance, San Juan Part. Is Plaintiffs' contention that the automatic stay of Section 362 and 922, incorporated by PROMESA upon the filing of a Title III case by the Debtor, does not apply to the present case, and thus, the automatic stay should be lifted.

Plaintiffs challenge the action of the Department of Education of attempting to apply, retroactively, in an unlawful and inapplicable manner the dispositions of Law 26 of April 29, 2017, better known as the "Law for Compliance with the Fiscal Plan" to preclude them from obtaining their vested and acquired statutory right to payment and liquidation of accumulated, earned and vested sick leave pay up to the maximum of ninety (90) days upon retirement in accordance with Law 184 of August 3, 2004 better known as the "Law for the Administration of the Human Resources of the Public Sector", and the law that abrogated Law 184, Law 8 of February 4, 2017, which respected and adopted Law 184-2004's right to liquidation of up to ninety (90) days of accumulated sick pay leave upon retirement. The aforementioned laws, were enacted prior to Law 26-2017.

Each one of the four hundred and twelve (412) Plaintiffs applied for retirement with the Department of Education on or before January 2017, and according to the then applicable law, Law 184-2004, upon application of retirement and approval of retirement, each Plaintiff became vested with the right to receive a liquidation of their accumulated sick leave pay upon retirement.

Law 8 enacted on February 4, 2017, respected and incorporated Law 184-2004's disposition that upon retirement public employees, such as teachers, were vested with a statutory right to liquidation and payment of their accumulated sick leave pay up to the maximum of 90 days.

Plaintiffs' right to liquidation and payment of their accumulated sick leave was granted by a Commonwealth statute and pursuant to said statute, the right to liquidation of up to 90 days of sick days upon retirement became a vested right of each Plaintiff and became part of its proprietary acquired rights, upon each Plaintiff applying for retirement and the retirement for each Plaintiff being approved by the Department of Education. All of the Plaintiffs, applied for retirement with the Department of Education (before January 2017) and were granted retirement by the Department of Education (on or before March 31, 2017) for having complied with all requirements of years of service and other factors. All of the aforementioned occurred before the enactment of Law 26-2017 and before the filing of Debtor's Title III case.

On April 29, 2017, the Commonwealth enacted Law 26, titled Law for Compliance with Fiscal Plan, which established a stay or freeze of the dispositions of Article 9 of Law 8-2017 which recognize the statutory right of public employees to the liquidation upon retirement of any accumulated sick leave days up to a maximum of 90 days.

At the time of enactment of Law 26-2017, all Plaintiffs had already applied for retirement (January 2017) and before enactment of Law 26-2017, the Department of Education had approved all of Plaintiffs' applications for retirement (on or before March 31, 2017). Thus, at the time of enactment of Law 26-2017, Plaintiffs had already acquired the statutory rights of Law 184-2004 and Law 8-2017 for their payment or liquidation of their

accumulated sick leave pay liquidation upon retirement. Upon effective day of retirement of service from the Department of Education, which occurs at some point in the month of May of each year, and for year 2017 was May 31, 2017, pursuant to the dispositions of Article 7.2 of Law 160 of December 24, 2013, Plaintiffs were unlawfully denied by the Department of Education their acquired statutory rights to Plaintiffs' accumulated sick leave pay, up to a maximum of 90 days.

The Department of Education's unlawful and improper interpretation and retroactive application of Law 26-2017 effectively impairs Plaintiffs' previously acquired statutory right to receive in upon retirement a payment for their accumulated sick leave days.

The retroactive application of laws is prohibited by Article 3 of the Civil Code of Puerto Rico, 31 L.P.R.A. Sec. 3 establishes that "[l]as leyes no tendrán efecto retroactivo, si no dispusieren expresamente lo contrario. En ningún caso podrá el efecto retroactivo de una ley perjudicar los derechos adquiridos al amparo de una legislación anterior."

(Our Unofficial Translation of Sec. 3 of the Civil Code as follows "[l]aws shall not have retroactive effect, unless expressly stated otherwise. In no case or circumstance, shall the retroactive effect of law impair the acquired rights provided by a prior statute.").

In accordance with Puerto Rico Civil Code, the Department of Education purported application of Law 26-2017 retroactively as to Plaintiffs acquired rights under a prior statute, violated long standing law found on the Civil Code of Puerto Rico, Sec. 3 and is an unlawful act by the Department of Education since it purports to impair by retroactively applying Law 26-2017 dispositions to the rights of Plaintiffs acquired under a prior statute of the Commonwealth.

Inasmuch, as the purported retroactive application of Law 26-2017 by the Department of Education to Plaintiffs' right to sick leave pay upon retirement violates the disposition of the Puerto Rico Civil Code that preclude the retroactive application of any law to impair the acquired rights under a prior statute, the stay must be lifted to allow Plaintiff to obtain Declaratory Judgment under Puerto Rico Law that Debtor's purported actions are illegal and contrary to law.

Relief of stay should be granted inasmuch as Movants do not seek collection of a Debt, but that the Court of Puerto Rico, San Juan Part rule over whether the retroactive interpretation given by the Department of Education to Law 26 in applying its disposition to Teachers' already vested accumulated sick leave pay upon retirement is a legal or unlawful act by the Department of Education and to rule whether retroactive application of Law 26 by Department of Education to deprive Movants of an acquired right under a previous law is in accordance with Puerto Rico law.

In the alternative, the stay should be lifted on equitable grounds since the interest of justice so requires based on the following factors:

1. Movants are Only Impaired Class Affected by Retroactive Application of Law 26. Movants, whom are exclusively Teachers, are the only public employees that would have been entitle to accumulated sick leave pay, that would have apply for it, be granted retirement before April 29, 2017, effective day of enactment of Law 26, but by operation of Law 66, need to await until May 31, 2017 to receive their already calculated and approved, therefore vested and acquired accumulated sick leave pay – which for any other public employee is due upon granting of retirement – but for Movants is not upon granting of retirement (March 31, 2017) – which predates Law 26 enactment - but upon completion of the school year. Any other public employee that applied for retirement on or before January 2017, and would have been granted retirement before April 29, 2017, just like all Movants here did, would have received their accumulated sick leave pay immediately upon the calculation and approval by the retirement system. Hence, Movants are the only public employee that are being affected by, a clear retroactive and inappropriate application of Law 26, which improperly deprives them of their previously statutory acquired rights of accumulated sick leave pay upon retirement.

2. Moving Are Suffering a Real and Palpable Hardship. Movants, whom are Teachers, are experiencing a real hardship. Unlike other employees of the Debtor, Teachers do not contribute, nor receive Social Security. Moreover, Movants hardship is real and imminent as the Oversight Board has announced a proposed reduction on pensions, the only form of income Movants have of up to 25%. Cut that will significantly impair Movants livelihood going forward. Depriving Movants of their statutory previously acquired rights to sick leave pay, creates an additional hardship upon movants that is not in accordance with the balance of equities and does not serve justice.

3. Equitable Relief is Justified Since Movants Have No Real Alternative Remedy Under the Law. Movants right to accumulated sick leave pay accrued before March 31, 2017. That is, within one hundred and eighty (180) days of the filing of the Title III case of the Debtor. However, since Section 507(a)(4)(A) of the Bankruptcy Code, 11 U.S.C. Sec. 507(a)(4)(A) is not incorporated by PROMESA, Movants are not granted priority of payment on any proof of claim they would file in regards to their claim for accumulated sick leave pay, rendering any claim to be diluted in the unsecured pool of claims. Under the provisions of the bankruptcy

code, Movants would have been granted a priority on their sick leave pay claim. Under PROMESA, Movants are not afforded such priority. Which in the balance of equity makes more compelling the lifting of the stay in the present matter.

4. Not lifting the stay is against public policy. PROMESA's purpose was not meant for the allowance of unfair, disparate and abusive application of the Title III Automatic Stay to shield Debtor from unlawful acts by one of the instrumentalities. That would defeat the public policy behind the PROMESA statute. Inasmuch as the retroactive application of Law 26 is prohibited by the laws of the Commonwealth of Puerto Rico to impair the previously acquired rights of Movants under a prior law, the automatic stay must be lifted to allow the Court of First Instance, San Juan Part to rule upon the lawfulness or unlawfulness of the Department of Education's purported retroactive application of Law 26 as to Movants' right to receive their statutory, previously acquired right to accumulated sick leave pay upon retirement.

5. The Questions Require Exclusively Puerto Rico Law Interpretation. Since the matters contained in the Complaint are limited and exclusively under Puerto Rico law and its application, the proper venue to continue any litigation upon the lift of the automatic stay are the Courts of the Commonwealth of Puerto Rico.

In accordance with the Lift of Stay Protocol, please provide notice to counsel José Luis Barrios Ramos at barrios.jl@outlook.com or at 787-593-6641 of the available dates to meet and confer to attempt to resolve the present request to lift the automatic stay.

Best regards,

s/José Luis Barrios



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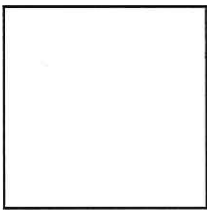
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